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91-1175

Supreme Court, U.S.
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No.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1991

DAVID MORGAN, ET AL,

Petitioners

vs.

COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF LOS ANGELES, ET AL,

Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE CALIFORNIA SUPREME COURT

David Morgan
6262 Sunset Blvd.
Hollywood, Calif. 90028
Petitioner in pro per

QUESTIONS PRESENTED

1. A project area committee is required by redevelopment law to protect low- and moderate-income residents endangered by relocation. Were procedural due process and equal protection rights violated by failing to give committee formation notice to at least 50 % of the residents? Must the notice text warn all interested persons of specific project dangers?

2. By statute the residents should have controlled all the project area committee seats but actually were only allowed to fully control 16 %. Did the method used to select members of the project area committee violate the procedural due process and equal protection rights of the low- and moderate-income residents?

3. There are thousands of sound structures in the project area where only about 5 % could be shown "blighted." Are rights to property and equal protection violated by taking eminent domain and redevelopment powers under the claim of "public use."

PARTIES

Plaintiffs in Los Angeles Superior Court Case C 607 002:

David Morgan
Norton Halper
Richard Carman *

Defendants in Los Angeles Superior Court Case C 607 002:

Community Redevelopment Agency of the City of Los Angeles
City of Los Angeles
County of Los Angeles
Los Angeles City Planning Commission
Los Angeles Unified School District
Los Angeles Community College District
Metropolitan Water District
Southeast Mosquito Abatement District
West Mosquito Abatement District

Defendants/Interested Persons in Los Angeles Superior Court Case C 607 002:

Betty Blue *
Judy Blue *
Patricia Morley *
Susan B. Nelson
Karen Hale Wookey

Jamia Riehl
Katherine Armour
All persons interested in the matter of the redevelopment plan for the Hollywood Community Redevelopment Area as adopted by Ordinance 161,202 on May 7, 1986 by the City Council of the City of Los Angeles, the validity of all proceedings theretofore taken or made for or in any way connected with the adoption of the redevelopment plan

Plaintiffs in Los Angeles Superior Court Case C 607 295:

Susan B. Nelson, President of Save Hollywood Our Town
Karen Hale Wookey, Vice President of Save Hollywood Our Town
Jamia Riehl, Secretary of Save Hollywood Our Town
Katherine Armour, Board Member of Save Hollywood Our Town

Defendants in Los Angeles Superior Court Case C 607 295:

Community Redevelopment Agency of the City of Los Angeles
County of Los Angeles
Mark Bloodgood, Auditor-Controller of the County of Los Angeles

Defendants/Interested Persons in Los Angeles Superior Court Case C 607 295:

Betty Blue *
Judy Blue *
All persons interested in the matter of the redevelopment plan for the Hollywood Redevelopment Project as adopted and approved by Ordinance No. 161202 on May 9, 1986 by the City Council and Mayor of the City of Los Angeles, the Validity of the Hollywood Redevelopment Plan, and any and all matters or any matters

relating to or encompassed within
the Hollywood Redevelopment Plan

* dismissed parties

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PETITION FOR A WRIT OF CERTIORARI TO THE CALIFORNIA SUPREME COURT

David Morgan, et al, petition for a writ of certiorari to review the judgment of the California Supreme Court.

OPINIONS BELOW

The order of the California Supreme Court is not reported (App. A). The opinion of the Court of Appeals ("Opinion") is reported at 231 Cal.App.3d 243 (1991) (App. C). The ruling of the Trial Court is not reported. (App. E, F).

JURISDICTION

The order of California Supreme Court was entered on August 22, 1991. (App. A). The jurisdiction of this Court is invoked under 28 U.S.C. 1257 (a). The issues were raised below by complaint and at each stage. (App. H, I, J).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Quotations are in Appendix G.

1. U. S. Constitution Amendments I, V, XIV. 2. California Constitution Article III, Section I. 3. California Health and Safety Code ("HSC") Sections 33032, 33320.1, 33321, 33385, 33386. 4. U. S. Department of Housing and Urban Development Public Agency Letter No. 458.

STATEMENT

Redevelopment Abuse is a National Problem

The Hollywood Redevelopment Project is a classic illustration of the corrupting potential of redevelopment powers. In California alone over $ 1 billion is lost

from legitimate public services to redevelopment agencies annually, while the agencies are over $ 17 billion in debt. Thousands of other redevelopment projects across the nation are engaged in similar abuses as here. The Project's diversion of a billion dollars from other critically-needed taxing uses and its allowance of unrestricted use of the power of eminent domain provide irresistible incentives to redevelopment bureaucrats to push through the Project by any means necessary and to bulldoze an affluent, viable community which would regenerate itself without redevelopment. Project Area has had average growth in assessed value of 10 % per year over the past 10 years from privately financed development, more than a $ 600 million increase since 1986. Recognizing the lure of these misincentives, the legislature has

increasingly provided safeguards against abuse of awesome redevelopment powers.

In ramming through the Hollywood Redevelopment Project so as to grab tax increment money and eminent domain power, defendants Los Angeles Community Redevelopment Agency ("CRA") and City of Los Angeles ("City") ran roughshod over the protective requirements. Notice of the critical project area committee ("PAC") formation meeting was by haphazard distribution which was not calculated to give actual notice to area residents by reasonably available means. Instead of meeting statutory requirements for a PAC self-formed by the residents, the CRA manipulated formation to improperly impose its will. The Court's approach simply winked at the toughened up statutory requirements enacted to make sure municipalities cannot do what City and CRA have

done here - make a phony finding of "blight" in order to justify diverting tax increment dollars from other taxing agencies to the CRA. Opinion is another cover up of the widespread corruption of California CRAs now engaged in widespread fakery of "blight" leading to financial collapse of speculative hotels and shopping centers. This action has the effect of a class action with Plaintiffs statutorily empowered to litigate the rights of all the tens of thousands of interested persons.

Overspeculation in real estate by CRAs is undoubtedly a factor in the savings and loan crisis. CRAs generate fiscal detriments endangering bonds and their misdirections of funds may contribute to bankruptcies of cities, counties and school and other districts. Defendant Los Angeles Unified School Dis-

trict just imposed retroactive major salary reductions on all teachers to avoid bankruptcy. Project will take over $ 50 million from law enforcement services over 30 years. CRA claimed crime was part of "blight" but now maintains its funds may not be spent for police officers. Our state government faces fiscal disaster with multi-billion dollar deficits.

Project Area Committee

The residents of a project area have federal rights to equal protection and due process notice in the self-formation methods and election of a PAC. Appellant David Morgan appealed on federal rights but the Court of Appeal amazingly ruled federal rights do not exist in redevelopment by saying there are no fundamental vested rights affected. (Opinion 261, App. C). The PAC is a local government

agency and is required to protect low- and moderate-income residents from redevelopment abuse and forced relocation.

CRA has long been a ring leader in constitutional abuse and is famous for displacing 15,000 residents in 7300 housing units from Bunker Hill. The props have been set on the Hollywood stage for a similar unmitigated disaster.

Widespread redevelopment abuses led to Department of Housing and Urban Development ("HUD") requiring PACs in 1968. In Hollywood CRA perceived an independent PAC as a restriction upon their dictatorial power and took extreme measures to suppress the PAC. Over 8000 residential units were not noticed of PAC formation. Residents were denied their statutory right to specify categories of and to vote on all 25 seats and could fully control no more than 4 PAC seats. Having a

clear conflict of interest as the condemnor, the CRA attorney failed to disqualify himself as the PAC attorney; many members were bribed by CRA.

Unconstitutional Imposition of Redevelopment Upon Sound Structures

Since the founding of the Republic the people have had federal rights to their private property. The Fifth Amendment provides it may not be taken at all for private use, even if just compensation is paid. The Court of Appeal ignored this. To prove "blight" there must be over 80 % buildings beyond repair, dangerous or slum. The building conditions in Hollywood are the exact opposite of this, only about 5 % of the buildings could be said to be in such bad condition.

All across America prime real estate with a predominance of sound buildings

has repeatedly been declared "blighted" as an excuse for transfer to politically connected developers. Opinion is in total conflict with prior rulings of this Court, Circuit Courts and Supreme Courts of Ohio, Virginia and North Carolina.

REASONS FOR GRANTING THE PETITION

Supreme Court Rule 10.1 (b), (c) specifies grounds for review exist when a state court has decided a federal question in a way that conflicts with applicable decisions of state courts of last resort, federal courts of appeal or this Court. Grounds for review are present for each of the questions in this case.

I.
OPINION IS IN CONFLICT WITH THE ESTABLISHED RULINGS OF THIS COURT ON RIGHTS TO DUE PROCESS AND EQUAL PROTECTION IN NOTICE

The procedural due process and equal protection rights of the residents were violated by failure to properly notice

formation of the PAC. CRA failed to give notice to over 50 % of the tenants. CRA failed to provide a notice (App. P) which gave any warning thousands of residents would be relocated, although they admit 3496 would be. Opinion is completely in conflict with the federal standards described in Mathews v. Eldridge, 424 U.S. 319 (1976), discussed infra. Opinion conflicts with Card: "Here plaintiffs and others owning property or living within the added area did not receive the same relocation protection they would have received had proper redevelopment procedure been followed... They were thereby deprived of substantial property rights without constitutional due process of law in the substantive sense." (Card v. Community Redevelopment Agency of South Pasadena, 61 Cal.App.3d 570, 582; (1976) emphasis added).

By the early 1960s redevelopment and other public agencies had dislocated over two million people from their homes plus tens of thousands of small businesses. (App. M). There was immense suffering, deaths, suicides, severe physical illnesses and terrible economic effects on a vast number of those displaced. These abuses continue today across the nation on a prodigious scale.

Many of the unnecessary displacements stemmed from the pernicious doctrine espoused in Berman v. Parker, 348 U.S. 26 (1954) wherein the Court allowed the redevelopment land agency to condemn the department store of one owner to transfer to another developer. This reversed thousands of years of wise law (App. K) and, by continual enlargement, opened the door tc massive relocation of elderly, infirm, sick, uninformed, poor

and weaker parties who were unable to defend themselves. The real rationale for the condemnations was the weaker parties were in the way of highly profitable high density construction and influential developers and politicians, although all sorts of legal fictions were devised and written into state statutes.

A.

THE STATE COURT HELD THERE WAS NO FUNDAMENTAL RIGHT TO NOTICE AND THUS FAILED TO MEET FEDERAL STANDARDS

Petitioners appealed on the fundamental vested right to notice guaranteed by the Federal Constitution. (App. H). Opinion held there is no due process right to notice: "It is only in those cases, unlike the facts herein, where a party has acquired a fundamental vested right and the administrative decision substantially affects that right that the court will conduct an independent review

of the evidence and the record." (App. C, 261).

The Court ignored rights by holding that "substantial compliance" rather than "strict compliance" is sufficient, while CRA did not even substantially comply. Property owners and tenants in redevelopment areas have a Fifth Amendment right to due process notice. (Key West Harbour Development Corp. v. City of Key West, Fla., 738 F.Supp. 1394 (S. D. Fla., 1990)).

Due process of law requires a level of notice commensurate with the rights to be impacted by the governmental decision. (Mathews, supra, 334-5). The State Court erroneously did not consider, as it must: (1) the private interest that will be affected by the official action for which notice is required; (2) the risk of an erroneous deprivation of such interest

through the procedures used and the probable value of additional or substitute procedural safeguards; and, (3) the governmental function involved and the fiscal or administrative burdens that additional or different procedures would entail.

Step 1): The risk was great in 1983 that a PAC made up of primarily commercial interests favoring eminent domain and other policies to eliminate residential tenants would be formed. Project adoption is part of tenant and owner condemnation proceedings, with CRA given the encumbrance of a free 12 year real estate option with power to transfer titles to private parties, which clouds title, impairs ability to sell and borrow, to continue to lease and rent in the same location, and required recording with County Recorder.

Connecticut v. Doehr, 111 S.Ct. 2105 (1991) affirmed Mathews. The effects of imposition of redevelopment are worse than attachment which merits due process protection. Opinion is totally in conflict with the standards of Connecticut.

Tenants and owners have now lost the arms-length bargaining power they had via the PAC veto threat (HSC 33366) before plan adoption to remove the danger of relocation from the plan. PAC formation is federal (HUD Letter No. 458, App. G) and state protection (HSC 33385, App. G). Opinion hangs the sword of Damocles over all but most had no notice so they could use the PAC to rescue themselves.

Step 2): The Court failed to carry out Step (2) at all and to analyze the risk of an erroneous deprivation of the 1983 interests and the probable value of additional or different procedures. Since

the only notice all tenants must be given by statute is of formation of the PAC, which is their principal medium of hearing, it is crucial this notice strictly comply with due process. It was also the only notice that could have warned anyone this was the last chance they had to self-form a PAC to protect themselves against displacement and other dangers. As a matter of constitutional law, strict compliance with due process and equal protection is required since this is an eminent domain case (In Re Bunker Hill, 61 Cal.2d 21, 71 (1964), App. U).

CRA attorneys stipulated there is no newspaper paid legal notice of Dec. 13, 1983 PAC election but courts refused to correct erroneous Opinion (at 251): "THE COURT: Is this a stipulation you're willing to make, that there were no paid newspaper notices? MS. REIMANN: Regard-

ing PAC formation, yes, Your Honor." (emphasis added, RT 1417:25-27).

Newspaper notice still would have been inadequate: "In weighing its sufficiency on the basis of equivalence with actual notice, we are unable to regard this as more than a feint." (Mullane v. Central Hanover Bank and Trust Co., 339 U.S. 306, 315 (1950)).

Step 3): Mennonite Board of Missions v. Adams, 462 U.S. 791, 795 (1983), quoting Mullane required: "..."notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." (Mennonite, 795).

Council Motion of Nov. 18, 1983 required (App. Q): ... mail or deliver note of such meeting to each residence,... or use any other means reason-

ably calculated to provide each residence,... an actual notice... (emphasis added).

CRA correctly interpreted "each residence" as each individual residential unit, such as an apartment unit (RT1566:17-28). There was no significant fiscal or administrative burden to giving actual notice by mail. Legislature agreed and amended HSC 33385 during trial, to provide for mailed notice (App. G). Even in 1989, a remand to the City Council with directions for proper notice and reconsideration would not have delayed the 30-year plan much in relative terms. When the small burden is weighed against the rights at stake - eminent domain defense, physical and emotional injury, death, denial of notice of the hearing - it is clear the Court erred as a matter of law in its method of review of the CRA notice

procedures. Common sense dictates that most tenants in the project area would not receive an unaddressed flier which was simply dumped on street corners, on the doorstep or in the lobby of their apartment building. The Court erroneously reviewed notice (and the case) by the lax quasi-legislative standard, rather than de novo by the strict scrutiny test. (Opinion 251, 260). The beneficiary of the constitutional error was required to prove beyond a reasonable doubt that the error complained of did not contribute to the decision, but CRA and City never proved this. (Chapman v. State of Calif., 386 U.S. 18, 23 (1967)).

CRA refused to produce the administrative record and all project files for Morgan and Carman before Council hearing, prepared an arbitrary record behind closed doors after suit was filed, ob-

tained Opinion which excluded Plaintiff evidence, and apparently the notice evidence (App. D), not presented at Council hearing violating due process just as in USA v. Allied Signal, 736 F.Supp. 1553, 1558 (N. D. Cal. 1990), where de novo review was mandated. (Opinion 258 - 261).

B.

OVER 8000 OUT OF 16,000 RESIDENTIAL UNITS WERE NOT NOTIFIED AT ALL OF PAC FORMATION

Since Council dictated an election had to be held it must be fair and comply with due process and equal protection. (Chisom v. Roemer, 111 S.Ct. 2354, 2366, 2368 (1991)). There are about 16,000 residential units in the project area. It is uncontroverted no written notice was delivered to about 8,000 of these units for the 1983 PAC election and there was no paid newspaper notice. Plaintiffs presented a comprehensive survey (App. S) and declarations of 167 witnesses to

demonstrate failure of notice. The Trial Court judicially noticed the totally defective PAC notice but ignored the blatant facts in its decision: "So that is not an issue. That was acknowledged that some people did not receive the flyers. It was not 100 percent accurate or effective. That is before the Court with prior testimony." (RT2896:16-19).

Plaintiffs made offers of proof (CT17871-17876) of testimony of over a hundred live witnesses not receiving notices and all survey takers but Court ruled declarations be submitted (RT2526, 3048:1-7). Court judicially noticed it has been a given there were many security apartments (RT2503:27-2504:7) and it was not necessary to admit all these notice declarations and exhibits (RT3045:15-18, 3047:4-6, 6503:5-14, 6673:18-6674::11), indicating it was not controverted there

were many security units of various types in project area and admitted difficulties in delivering fliers (RT6673:18-6674:9).

Defendants admitted this (RT6674:10) and facts of Appellant position on PAC notice issue. They presented no meritorious argument against requirement of "notice reasonably calculated to give each residence... actual notice" as specified by Council since their own staff member Donald Pelegrino admitted they never did this. He testified 1983 PAC election fliers were not delivered to individual units in security buildings but left in common areas (RT1567:10-14, 1567:27-1568:8), fliers were not distributed on second or higher residential building floors, security or not (RT1567:15-23). CRA admitted defective notice: "When these same men went up to deliver the fliers, the notices we had --

people were shooing them away with a broom or a hose, and not letting them go on their property." (RT1573:2-5).

In 1983 the project area contained about 16,000 residential units, single-family, duplex and multi-family (3 or more units) buildings. Survey results were: 13,214 multi-family units with 4667 security units identified in 1983 whose building entrances to units required key for access through locked door or locked gate. There are 3000 more possible security units. Thus 35 % - 58 % were security in 1983. At least 2302 non-security units on second and higher floors of other buildings did not receive fliers individually. Survey shows at least 4667 security + 2302 non-security + about 1500 additional security second floor or higher units not notified, a total of 8469 units not noticed. CRA specified

37,000 area residents. An estimated 15,000 - 20,000 residents at least did not receive actual notice.

The Trial Court asked how 1983 security building fliers were handled (RT3045:26). 1560 units were surveyed. At buildings with 656 units fliers were always left outside, at those with 1278 units placing fliers at each unit was not allowed and at those with 505 units fliers were discarded immediately when found (CT18943). In these 1560 units no Declarants received a 1983 PAC election flier at their units nor did they see it in their buildings. Very few heard of project in 1983-1985 and most only after adoption in 1986-1988 (CT18946).

Doreet Rotman testified to Pelegrino admitting fliers in 1983 put in garbage (RT2579:1-24) and to 60-80 complaints at PAC in 1984 of no notice (RT2599:3-17).

Many residents were disenfranchised since notices informed there would be only one vote per household (Gordon, RT2183:14-30:20, 2186:22-25, Bernstein, RT2206:1-3, Smith, RT2239:2-3, 2239:24-2240:9, Rotman, 2573:1-2576:18). Only 50 filled out a residential tenant voter form (D9554A:1-181). No form shows more than one tenant voting from a household. By surnames there were no husband and wife or relative tenants voting from an address. There is no evidence there was change from one vote per household to one vote for each adult tenant in it preventing tenant Smith from obtaining votes (RT2277:11-2279:16). Strict scrutiny review is required (New York City Board of Estimate v. Morris, 103 L.Ed.2d 717, 727, 733 (1989).

C.

THE TEXT OF THE NOTICE FAILED TO GIVE DUE PROCESS WARNING OF EMINENT DOMAIN AND PROJECT DANGERS TO ANYONE

PAC notice (App. P) had to but failed to warn anyone personal rights to life, health, liberty to remain in current location, property, equal protection, and petition via PAC were endangered due to the Project. Many residents are immigrants (over 47 %) and non-English speaking (Ex 117:2034) and citizens and immigrants alike are incompetent and ignorant on redevelopment law and practice (RT2543:4-18); CRA kept them ignorant (RT2285:9-19, 2288:24-2292:18). Mennonite requires much detail on rights being infringed: "It is true that particularly extensive efforts to provide notice may often be required when the State is aware of a party's inexperience or incompetence." (Mennonite, 799, emphasis added).

"The principle requires that the content of the notice sufficiently inform

the party entitled to a hearing of that which it must know so that the right may be effectively exercised... In this sense the process that is due is that which will "minimize 'substantially unfair or mistaken deprivations' of the entitlements conferred by law upon private individuals or groups." (Southern Pacific Transportation Co. v. State Board of Equalization, 191 Cal.App.3d 938, 951 fn. 12 (1987) emphasis added).

PAC notice requirements must be strictly enforced since this is the only notice the tenants ever get and to tens of thousands of low- and moderate-income residents, small businesses and small property owners CRA intends to displace that would have enabled them to defend their rights via the PAC. The heavy burden of CRA to show voluntary and intelligent waiver of due process rights to no-

tice has not been met to overcome the strong presumption against waiver of constitutional rights, especially of parties with minimal educational preparation. (USA v. White, 429 F.Supp. 1245, 1251 (1977)). Opinion is in total conflict with many Supreme Court decisions on notice.

II.
OPINION IS IN CONFLICT WITH CIRCUIT COURT OPINIONS ON THE PROCEDURAL DUE PROCESS AND EQUAL PROTECTION RIGHTS OF THE LOW- AND MODERATE-INCOME RESIDENTS SUBJECT TO RELOCATION

The method used to select members of the PAC violated the procedural due process and equal protection rights of the low- and moderate-income residents. CRA admits planning to displace 3496 residents, triggering the requirement of a PAC, whose duty is to protect residents from forced relocation and redevelopment abuses. According to Opinion at 250-1: "Health and Safety Code section 33385 as

in effect in 1983 did not specify the method of the selection of the PAC members..., appointment of members is not precluded... Substantial evidence supports the determination that the PAC was self-formed and representative of the project area."

Opinion is in serious conflict with federal standards, since it allowed non-residents to form and control the PAC, when HSC 33385 provides the PAC shall be self-formed and controlled by the residents and community organizations.

"Plaintiffs here complain that they were denied the equal protection of the laws in the planning and implementation of the relocation program, and this, at least, is a justiciable claim." (Norwalk CORE v. Norwalk Redevelopment Agency, 395 F.2d 920, 929 (2d Cir. 1969).

There are federal rights to litigate the lack of a hearing on a relocation plan against a CRA. (Gart v. Cole, 263 F.2d 244, 250 (2d Cir. 1959)). The threat of dislocation gives federal standing as denial of equal protection. (Arrington v. City of Fairfield, Ala., 414 F.2d 687, 691, 692 (5th Cir. 1969)). Fifth Amendment and relocation abuses, zoning and permit coercion and disinformation occurred in Dearborn. (Amen v. City of Dearborn, 718 F.2d 789, 795 (6th Cir. 1983)). Such abuses are common in CRA projects. Redevelopment agency violations of due process and equal protection can be pursued in federal action. (Williams v. City of St. Louis, 783 F.2d 114 (8th Cir. 1986)).

Opinion, 261, asserts there are no fundamental vested rights involved and is completely in conflict with the decisions

of the Second, Fifth, Sixth and Eighth Circuits.

A.

FEDERAL LEGISLATIVE INTENT - A PAC MUST BE FORMED BY RESIDENTS FOR RESIDENTIAL REHABILITATION REDEVELOPMENT PROJECTS

The Hollywood project has been using HUD funds for at least 10 years and borrowed so many millions without HUD approval that HUD demanded repayment this year. In an effort to ease the suffering of tenants and homeowners in federally funded redevelopment projects HUD issued Local Public Agency Letter No. 458 of June 24, 1968 (App. G) requiring the formation of Project Area Committees, solely formed by, selected by and composed of residents. (Intent, App. N, O). "This letter requires the establishment of a Project Area Committee (PAC), made up of residents of the project area, for all urban renewal projects which involve res-

idential rehabilitation... "(emphasis added).

"The Court is also mindful... the Housing Act has been amended in significant respects in 1965 and 1966, as already above noted, to make much more clear the Congressional intent to protect the interest of residents about to be displaced by a redevelopment agency..." (Western Addition Community Organization v. Weaver, 294 F.Supp. 433 (N. D. Calif. 1969)).

"But people have got to decide that if they want to build buildings and throw out tenants and use federal funds to do it, they have got to meet the requirements of the law with respect to providing alternative housing. This is not a position of this Court; this is the position of the Congress of the United States." (Tenants and Owners in Opposi-

tion to Redevelopment v. HUD, 338 F.Supp. 29 (N. D. Calif. 1972)).

Redevelopment agencies have strenuously resisted independent PACs protecting the residents from relocation. In Philadelphia the Washington Square West PAC sued HUD and the local CRA in 1969, over lack of citizen participation, Fifth and 14th Amendment rights in displacement, followed by 10 years litigation on a bed of tensions. (Fox v. HUD, 468 F.Supp. 907 (E. D. Pa. 1979)). CRAs likewise have severely violated constitutional rights of small commercial owners. (Battison v. City of Niles, Ohio, 445 F.Supp. 1082 (N. D. Ohio, 1977)).

B.

STATE LEGISLATIVE INTENT - A PAC MUST BE FORMED BY RESIDENTS WHEN REDEVELOPMENT WILL DISPLACE LOW- AND MODERATE-INCOME RESIDENTS

Due to extensive statewide abuse of redevelopment such as in San Francisco

causing much relocation trauma, sickness, non-compensable economic loss and suffering to the residents and HUD Letter 458, Senate Bill 303 sponsored by the San Francisco Human Rights Commission was introduced by Senator George Moscone. "...history of problems and infectious conflicts that have resulted due to communications breakdown between neighborhood residents and legislative bodies when redevelopment projects are undertaken... In San Francisco alone over 15,000 families and individuals will lose their homes over a five year period..." (App. N, Terry N. Mc Gann, June 26, 1968, emphasis added).

In 1969 a similar bill was enacted as HSC 33385 and later the PAC was given a veto power (HSC 33366) over redevelopment plans equivalent to that of the Mayor and the Planning Commission, giving

the PAC a strong collective bargaining lever because the PAC can veto the plan to prevent adoption or to obtain provisions less onerous to residents and small business. The PAC unequivocally must be selected by residents and is entrusted with defending the residents against displacement by the provisions of HSC 33386. Had the Legislature intended for the city council to appoint PAC members, it undoubtedly would have specified as much.

The Fair Political Practices Commission analyzed HSC 33366, 33385 et seq. and ruled: "Members of redevelopment project area committees are 'public officials' who are subject to the Act's disclosure and disqualification provisions... individuals who sit on project area committees are 'members' of a local government agency." (In Re: Rotman, 10 FPPC Opinions 1, 6 (1987)). The Trial

Court affirmed the Commission ruling PAC members are local public officials. (RT 280:18).

C.
THE RESIDENTS WERE DENIED THEIR RIGHT TO SELF-FORM THE PROJECT AREA COMMITTEE AND TO ALLOCATE ITS SEATS

1.
Project Area Committee Elector Requirements

A PAC is formed only by residents and community organizations since HSC 33385 requires: "...call upon the residents and existing community organizations... to form a project area committee..." (HSC 33385). No one else can select the number of seats in a category, nominate, vote for or appoint members. To protect residents from relocation, others are rationally excluded since a call for a PAC only is required when: "... a substantial number of low- and moderate-income families are to be displaced by the redevelopment project..." (HSC 33385).

Members of a PAC consist of at least one member from each of four categories specified in HSC 33385 if such persons exist in the project area, residential owner occupants, residential tenants, businessmen and members of community organizations.

Since PAC members are local government officials under In Re: Rotman, supra, the equal protection guarantee that applies to local government elections applies. (NYC Board of Estimate, 716-7, supra; Quinn v. Millsap, 109 S.Ct. 2324, 2333 (1989)).

Opinion (at 250) held CRA could specify the categories and number of seats in each and that several classes of non-residents could vote and erroneously ignored the plain English meaning of the unambiguous statute HSC 33385, in direct conflict with rulings of this Court:

"When we find the terms of a statute unambiguous, judicial inquiry is complete, except "in 'rare and exceptional circumstances.'" (Rubin v. United States, 449 U.S. 424 (1981)). "[i]n the absence of a 'clearly expressed legislative intention to the contrary,' the language of the statute itself 'must ordinarily be regarded as conclusive.'" (Burlington Northern Railroad Co. v. Oklahoma Tax Commission, 481 U.S. 454 (1987); Demarest v. Manspeaker, No. 89-5916, (Jan. 8, 1991)).

Exclusion of non-residents from voting is constitutionally permissible to protect the compelling rights of a weaker class of persons. (Citizens Against Forced Annexation v. Local Agency Formation Commission, 32 Cal.3d 816 (1982).

CRA dictated the election rules which provided each voter could only vote

in his own category causing extreme vote dilution of residents. Thus residents could only fully control the 4 tenant (about 30,000 tenants) seats (16 %). Residents competed with non-resident residential owners (about 1,000 + owners) to elect the 4 (16 %) non-resident or resident owner seats and competed with all others in the elections for 4 community organization (about 33,000 + persons) seats (16 %), where residential voter influence was suppressed by failure of notice. Residents had no vote at all on the 6 businessmen seats (about 1,800 persons), the 3 Industrial Warehousing Manufacturing seats (about 150 persons) and the 4 council member appointed (1 elector) community organization seats (total 52 %). Each resident was confined to voting in one of 4 CRA chosen sub-areas, thus could only cast one vote for a resi-

dential candidate. Only about 200 persons voted in 1983.

"Once the geographical unit for which a representative is to be chosen is designated, all who participate in the election are to have an equal vote..." (Gray v. Sanders, 372 U.S. 368, 379, 381 (1963)). There is ample precedent for the electorate being different from the office-holders. Only lawyers may be elected to judgeships but all citizens of age may vote on them. If CRA's peculiar scheme were to stand, where voters could only vote in their own category (plus 4 organization seats), then each resident would be excluded from voting on 20 of the 25 PAC seats. CRA failed to meet its burden to justify the exclusion under the harsh "compelling state interest" test. (Hadley v. Junior College District, 397 U.S. 50, 59 (1970)). This is a strict scrutiny

standard but the trial court erroneously used the lax quasi-legislative standard. (Bullock v. Carter, 405 U.S. 134, 144 (1972); Westbrook v. Mihaly, 2 Cal.3d 765, 784-785 (1970); ...in cases involving 'suspect classifications' or touching on 'fundamental interests,'...the court has adopted an attitude of active and critical analysis, subjecting the classification to strict scrutiny. Serrano v. Priest, 5 Cal.3d 584, 597 (1971); Curtis v. Board of Supervisors, 7 Cal.3d 942 (1972); Choudhry v. Free, 17 Cal.3d 660, 664 (1976)). Additionally CRA only permitted one vote per household. The 4 Council (condemnor) appointees to PAC were unconstitutional.

Recently Council became so displeased with elected residents who gained control of the PAC and regularly vote to oppose condemnations and relocations it

derecognized the PAC, which still meets regularly, and appointed an Orwellian dummy committee with members, about 90 % non-residents, who agreed to always vote as instructed by Councilmember. This is continuing evidence of constitutional violations. Lippman v. City of Los Angeles, 91 Daily Journal DAR 12563 (1991)).

D.

CONDEMNOR CRA DENIED FEDERAL RIGHTS BY USING ITS ATTORNEYS TO MISLEAD THE PUBLIC AND PAC AND BY BRIBING PAC MEMBERS

Attorneys serving the PAC had a serious conflict of interest since they represented the condemnor. The PAC is entitled to independent attorney and staff paid for by the City. (HSC 33388) but never obtained these. The residents forming the PAC should have had expert independent counsel from the start, well before any election, counsel which was fully adverse to CRA to protect them.

See Rules of Professional Conduct of State Bar of Calif., 3-310, former 4-101, 5-101, 5-102; Jeffry v. Pounds, 67 Cal.App.3d 6, 10 (1977); Klemm v. Sup. Ct., 75 Cal.App.3d 893, 898, 901 (1977); Johnson v. Haberman and Kassoy, 201 Cal.App.3d 1468, 1475 (1988); Asbestos Claims Facility v. Berry and Berry, 219 Cal.App.3d 9, 26 (1990).

Condemnor CRA secretly bribed many PAC members to support project adoption. CRA required $ 150,000 loans from various parties, some of which obtained representation on the PAC but the loans were only to be paid back if the plan was adopted, thus these PAC members were bribed with their own money. These payments in Spring 1983 acted as financial deterrents to residents self-forming the PAC and controlling all seats in violation of HUD Letter No. 458 and HSC 33385. These mem-

bers generally supported adoption and represented large commercial interests. The bribes were not disclosed at the election and the members never abstained from voting.

III.
OPINION IS IN CONFLICT WITH RULINGS OF THIS COURT AND OF STATE SUPREME COURTS AS TO THE STANDARDS REQUIRED TO IMPOSE REDEVELOPMENT POWERS

Rights to property and equal protection were violated by taking eminent domain and redevelopment powers under the false claim of "public use." The entire intent of redevelopment law is to repair and replace buildings. Under Berman, supra, a very limited exception was allowed, to prohibitions against takings for private use, permitting a few sound buildings to be demolished, when over 80 % of the others were beyond repair or in need of major repairs. As the years passed the encroachments upon the strict standards increased until the ridiculous

extreme attained in Hollywood where only about 5 % of the buildings would meet the Berman standard. There are essentially no standards left so any property in California, and perhaps most states, may be redeveloped and condemned by a CRA. Opinion is in total conflict with the Federal standard.

A.

THE FEDERAL STANDARD IS THAT OVER 80 % OF THE BUILDINGS IN A PROJECT AREA MUST BE BEYOND REPAIR OR NEED MAJOR REPAIRS WHICH HAS BEEN AFFIRMED BY COURTS OF VARIOUS STATES

A very limited exception to the traditional standard was granted by this Court to impose eminent domain for private use under the legal fiction of "public use" when it could be shown a project area was predominantly "blighted" by evidence such as: "Surveys revealed that in Area B, 64.3 % of the dwellings were beyond repair, 18.4 % needed major repairs, only 17.3 % were satisfactory;

57.8 % of the dwellings had outside toilets, 60.3 % had no baths, 29.3 % lacked electricity, 82.2 % had no wash basins or laundry tubs, 83.8 % lacked central heating." (Berman at 101).

Berman reversed traditional federal court decisions: "The taking of one citizen's property for the purpose of improving it and selling or leasing it to another, or for the purpose of reducing unemployment, is not, in our opinion, within the scope of the powers of the federal government." (USA v. Certain Lands in City of Louisville, 78 F.2d 684, 688 (1935)). "The pipe line owner, a private person, is, in effect, ordered to pay money to another private well owner for the purchase of oil which there is no wish to buy... There is here no taking for the public benefit... Our law reports present no more glaring instance of the

taking of one man's property and giving it to another... And this Court has many times warned that one person's property may not be taken for the benefit of another private person without a justifying public purpose, even though compensation be paid. (Thompson v. Consolidated Gas Utilities Corp., 300 U.S. 55, 78, 79 (1937)).

Opinion is in conflict with the decisions of the Supreme Courts of other states. The Hollywood building survey shows the area is not "blighted" but the Council made a "blight" finding. This same question faced the Supreme Court of Ohio, which ruled that it was a constitutional question whether the finding of "blight" was unreasonable, when it contradicted the building survey. (AAAA Enterprises v. River Place Community Urban Redevelopment Corp., 553 N.E.2d 597, 601;

(1990). The Supreme Court of Appeals of Virginia ruled that even 61 % dilapidation of dwellings or 39 % dilapidation of all buildings does not sustain a "blight" finding. (Bristol Redevelopment and Housing Authority v. Denton, 93 S.E.2d 288, 295; (1956)).

The traditional standard of American law is that private property may not be taken for private purposes. (Appendix K). The Supreme Court of North Carolina ruled: "Areas which are in fact "blighted" cannot be enlarged to include areas which are not in fact "blighted.'" (Horton v. Redevelopment Commission of High Point, 140 S.E.2d 728, 735 (1965)).

The Court of Appeals of Kentucky forbade inclusion of non-blighted property in a redevelopment project. (Prudential Building and Loan Assoc. v. Urban Renewal and Community Development

Agency of Louisville, 464 S.W.2d 629, 631 (1971)).

As in Hollywood, when the determinations had no relation to the facts or building survey, "We are confronted with a determination framed in statutory language without the suggestion of any specific facts which support that determination. A reviewing court cannot possibly identify the criteria used by the Seattle City Council in its determination that the area in question was a blighted area." (Apostle v. City of Seattle, 422 P.2d 289, 293 (1966)).

Also under California law there must be findings to bridge the analytic gap from the raw evidence to the ultimate decision. (Topanga Assoc. for a Scenic Community v. County of Los Angeles, 11 Cal.3d 506, 515 (1974)). See AAAA Enterprises, supra.

B.

THE STATE STANDARD IS THAT 100 % OF THE BUILDINGS IN A PROJECT AREA MUST BE SLUM OR POOR EXCEPT WHERE SUCH PREDOMINATE AT OVER 80 %

At the CRA Bunker Hill project: "The survey made... found 63.4 per cent of the residential structures in the area were classed as sub-standard or slum and of the remainder 20.8 per cent were poor and 15.8 per cent were acceptable. More than 55 per cent of said residential structures were in need of major repairs. (In re Bunker Hill, 61 C2d 21, 34 fn. 2; (1964)).

Under HSC 33320.1, the term "predominance" is defined as 80 % in another context. Predominance means beyond dominance, superiority in strength, power, influence or authority. Under HSC 33321, supra, the only buildings, improvements or lands which may be included in a redevelopment project area are those

whose physical condition is detrimental or inimical to the public health, safety, or welfare, with one exception. Normally, 100 % of the buildings in a project area must be detrimental or inimical by being slum, dangerous, poor or beyond repair. The only exception is, when such buildings only predominate but injuriously affect the entire area, then 80 % is sufficient.

C.

HOLLYWOOD FAILS TO MEET FEDERAL STANDARDS SINCE THE 5 % POSSIBLY "BLIGHTED" BUILDINGS DO NOT CONSTITUTE PREDOMINANCE

The statutory standard for predominance of "blight" is 80 % as discussed, supra. Hollywood does not have slum conditions of dangerous buildings which were shown in the District of Columbia under Berman (64.3 % beyond repair + 18.4 % needing major repairs = 82.7 %) and at Bunker Hill (63.4 % slum + 20.8 % poor =

84.2 %). Plaintiffs compiled CRA's data for all land uses (Ex 43, 44) in Ex 110:

BASIS	PROJECT AREA TOTALS	DEFENDANT Substantially Deteriorated + Heavy Rehabilitation + Moderate Rehabilitation	PLAINTIFF Substantially Deteriorated + Heavy Rehabilitation
PARCEL AREA			
AREA,	47,980,000	6,579,727	1,589,313
PERCENT		13.72 %	3.31 %
CITATIONS		(Ex110:A:2)	(Ex110:A:2)
NUMBER OF PARCELS			
NUMBER	2929	695	169
PERCENT		23.8 %	5.78 %
CITATIONS		(Ex110:A:2)	(Ex110:A:2)
NUMBER OF BUILDINGS			
NUMBER	3424	959	245
PERCENT		28 %-29.3 %	7 %
CITATIONS		(Ex117:1992, 2979,	Ex110:A p X)
AVERAGE OF ABOVE PERCENTAGES		22 %	5 %

Plaintiffs' compilation of CRA data shows only 5 % substantially deteriorated — or needing heavy rehabilitation, thus possibly "blighted." CRA adds moderate rehabilitation: "As a general statement

approximately 25 % of Hollywood could be considered in physically blighted condition." (CRA Baseline report, Ex 117:2579).

CRA claims single family residences 29.8 % sound, 36.4 % deferred maintenance, 24.9 % moderate rehabilitation, 7.6 % heavy rehabilitation and 1.3 % substantially deteriorated, the latter three giving 33.8 % "blight." (Baseline, Ex 117). The only buildings mentioned in Opinion are the 1076 single family residences which comprise under 3 % of building square footage, only 7.3 % of residential development, (Baseline, Ex 117) and none of them were found slum, dangerous, poor or beyond repair, as in Berman and Bunker Hill. Opinion seems to hold deferred maintenance comprises "blight" when even CRA did not claim this: "At least 36 percent of the single family

residences show deferred maintenance, an additional 27 percent require moderate to heavy rehabilitation." (App. C, Opinion, 231 Cal.App.3d 243, 256 (1991)).

On Bunker Hill there were 63.4 % slum residential buildings and 60 % dangerous buildings while the opposite is true in Hollywood, less than 5 %. Permitting buildings requiring minor to moderate upgrading to be characterized "blighted" would subject every urban area statewide to arbitrary redevelopment.

All 7 mandatory elements of the strict "blight" hierarchy were adopted to prevent adoption of project areas, wherever possible but most elements do not exist in Hollywood. Opinion erroneously reviewed under laxer obsolete version of HSC 33032 (Amended Stats 1976 ch 1336 Sec. 3) (App. G, Opinion, App. G at 255). HSC amendment effective Jan. 1, 1985

adopted strict hierarchy (Stats 1984 ch 147 Sec. 2) naming elements 2B, 3, 4 (App. G). The elements and evidence are:

(1) NEGATIVE SOCIAL OR ECONOMIC SUBFACTORS, HSC 33031 (social) or HSC 33032 (economic), SOME EVIDENCE

which cause (2) PREDOMINANCE (80 %) OF SLUM STRUCTURES, which are (2A) unsafe (HSC 33031) or (2B) suffer from economic dislocation (HSC 33032), NO EVIDENCE

and cause (3) SERIOUS BURDEN ON ENTIRE CITY (HSC 33030), NO EVIDENCE

and not curable by (4) PRIVATE ENTERPRISE OR TRADITIONAL GOVERNMENT ACTIVITIES (HSC 33030, 33032), NO CREDIBLE EVIDENCE

excluding (5) NON-BLIGHTED PROPERTY TO CAPTURE TAX INCREMENTS (HSC 33321), NO EVIDENCE

with (6) 80 % PREDOMINATING SLUM STRUCTURES (HSC 33321), EVIDENCE IS THE

OPPOSITE

and by (7) FULL EVIDENTIARY PROOF OF ALL 7 ELEMENTS, (HSC 33367 (d) 1, 5, 9. 10, 11), UNPROVEN

Emmington v. Solano County Redevelopment Agency, 195 Cal.App.3d 491, 499-501 (1987) invalidated redevelopment due to missing "blight" elements and found 2B) missing, "no showing these conditions had substantially interfered with the land's present agricultural use," 3) missing, "no showing ... conditions had rendered the project area a serious social or economic liability to the community," 4) missing as redevelopment could be reasonably be expected by private enterprise acting alone since, "We may safely assume these corporations are holding the land for future development, and they will develop it when they can see a profit," 6) missing as no predomi-

nance, "Out of 171 parcels in the project area, 19 exhibited some form of structural blight," (i. e., old barns) and 7) missing, "the project area was not blighted." The amended HSC 33032 effective Jan. 1, 1985 imposes even stricter standards against finding "blight." CRA argued a minority of "blighted" people (Element 1) somehow overrode the strict hierarchy and erroneous Opinion relied on such emotional rhetoric.

Hollywood is exactly parallel to the Emmington situation, most of the elements are missing and the project area is not legally "blighted." "True blight" was discussed in Regus v.City of Baldwin Park, 70 Cal.App. 3d 968, 978 (1977), citing Bunker Hill. None of conditions found in Berman or Bunker Hill, or anything remotely resembling them, exist in project area. In Hollywood, since commer-

cial, industrial, office and residential rental markets are all strong, just as in Sweetwater Valley Civic Assoc. v. National City, 18 Cal.3d 270, 279 (1976) and Emmington (500), there was no showing blighting conditions had "ended [the land's] present economic use." Claiming "blight" as an excuse to subsidize uneconomic large shopping centers is insufficient to justify unleashing extraordinary powers of redevelopment (Regus, 979; Emmington, 501). Even if one subarea of Hollywood were "blighted," the rest could not be added on.

City Council adopted "blight" and condemnation findings to subject to its martial law powers all the 95 % non-blighted buildings (2900 parcels with 3400 buildings) completely contrary to the obvious clear evidence and authority.

This was a violation of Fifth and Fourteenth Amendment rights.

E.
THERE IS NO RATIONAL NEXUS FOR THE ASSERTION OF CONDEMNATION POWER OVER THE PREDOMINATING NON-BLIGHTED PROPERTIESAND A WRONGFUL PUBLIC BURDEN HAS BEEN IMPOSED UPON AN ARBITRARY CLASS OF OWNERS AND TENANTS

Plan adoption eliminates key defenses to completion of eminent domain action and is in fact a finding of "public use" and Opinion purportedly conclusively validates the eminent domain findings of Ordinance 161 202. Just as with respect to Bunker Hill the Hollywood: "...proceedings should logically be considered in the nature of eminent domain,..." (Bunker Hill, 68-71). "(a) ...a resolution of necessity... conclusively establishes the matters referred to in Section 1240.030. (b) ... the resolution of necessity creates a presumption that the matters referred to in Section

1240.030 are true... (CCP 1245.250). CCP Section 1240.030 cites public interest and necessity, location and necessity of taking.

In practice adoption of the redevelopment plan has almost always satisfied California courts a form recital of texts of CCP 1240.030 and 1245.250 has established the "conclusive presumption" each property in the project area has been condemned and that cursory final steps of taking any property in a project area are satisfied by virtually summary court proceedings on taking issues contrary to the federal rights described in Grace Geothermal Corp. v. No. Calif. Power Agency, 619 F.Supp. 964, 968, 971 (1985).

Probably at least 10,000 redevelopment condemnations are pending annually in California and taking is denied in less than 1 % of the cases. There is no

rational nexus for taking any of the non-blighted buildings, since the condition for taking them relies upon supposed "blight" not present. "The evident constitutional propriety disappears, however, if the condition substituted for the prohibition utterly fails to further the end advanced as the justification for the prohibition." (Nollan v. California Coastal Commission, 483 U.S. 825, 837 (1987)). (Surfside Colony v. Calif. Coastal Commission, 226 Cal.App.3d 1260 (1991)).

The factual situation is the reverse of Berman. There is no burden from the unblighted buildings to justify imposing the condition of redevelopment and eminent domain for 30 years on their owners and tenants. (Ex117:2579).

Because a few parties may wish government benefits does not justify

requiring those not wishing any benefits to forgo their constitutional rights since there is no rational relation between the condition and the benefit. (Parks v. Watson, 716 F.2d 646, 652, 655 (9th Cir. 1983)). The right to own and control property has been unconstitutionally taken by establishing the conclusive presumptions of condemnation on over 3000 non-blighted structures just to cure a couple of hundred offenders.

The owners have a fundamental right to their property. (West Virginia State Board of Education v. Barnette, 319 U.S. 624, 638 (1943)). This is a personal right. (Lynch v. Household Finance Corp., 405 U.S. 538, 434-5; 31 (1972)). The fiction that assertion of jurisdiction over property is anything but an assertion of jurisdiction over the owner of the prop-

erty... is fundamentally unfair... (Shaffer v. Heitner, 433 U.S. 186, 212 (1977)). The dichotomy between personal liberties and property rights is a false one. (Dennis v. Higgins, 111 S.Ct. 865 (1991)).

A wrongful public burden has been imposed upon an arbitrary class of owners and tenants who keep their buildings in good condition. This is the type of intrusive governmental action which this court has uniformly found to be a taking: "[when] "regulation goes too far it will be recognized as a taking." (Pennsylvania Coal Co. v. Mahon 260 U.S. 393, 415 (1922)).

This is the same constitutional violation found in Nollan: "In short, unless the permit condition serves the same governmental purpose as the development ban, the building restriction is not a valid

regulation of land use but "an out-and-out plan of extortion." (Nollan, 837).

The predominating majority of the owners and tenants have received no special benefit nor created any special public burden to justify imposing the extraordinary powers of redevelopment upon them. Indeed, the Fiscal Review Committee, chaired by Los Angeles County, found nearly all of the project area should be deleted, as not "blighted" and causing severe fiscal detriments to all taxing agencies. (Ex 117, CT 87). Property owners have the right to be free from arbitrary or irrational zoning or land use actions. (Brady v. Town of Colchester, 863 F.2d 205 (2d Cir. 1988)). The Opinion is completely in conflict with many decisions of this Court and the Supreme Courts of Ohio, Virginia and North Carolina.

CONCLUSION

The Order of the California Supreme Court is in serious conflict with protections of constitutional rights. It's very simple: How come Los Angeles is holding elections without notifying the voters? How come the voters are denied their right to vote on all the candidates? How come billions of dollars of sound properties are found to be in slum condition? This Court should review the case.

Dated: November 19, 1991.

Respectfully submitted,

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Petitioners in pro per